No. 80-688

Supreme Court, U. S.
FILED
DEC 1 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

CORPORACION VENEZOLANA DE FOMENTO,

Petitioner,

v.

THE MERBAN CORPORATION, ROBERT J. REDMOND, VINTERO CORPORATION, VINTERO SALES CORPORATION AND VINCENT A. DE LYRA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF

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Respondents' Brief in Opposition raises the disingenuous argument, not addressed in the Petition, that the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330, 1602-1611, has tacitly abrogated the fundamental principle enunciated by this Court in *Federal Crop Insurance Corp. v. Merrill,* 332 U.S. 380 (1947), *viz.,* that a government is not liable upon contracts made by its agents unless they act strictly within the bounds of their authority.

Despite the fact that § 1602 of Title 28 expressly proclaims the purposes of the Act as procedural and jurisdictional only, Merban points to § 1606, which provides that "the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances . . ."

Quite aside from its erroneous premise that this 1976 statute could retroactively affect a 1975 transaction, Merban's argument is completely irreconcilable with the derivation of the § 1606 language, which is identical to the language of the 1946 Federal Tort Claims Act, 28 U.S.C. § 2674. That statute provides that: "The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances . . ."

Closely similar language appears in a still earlier statute waiving sovereign immunity, the Suits in Admiralty Act, 46 U.S.C. §§ 741-52, which provides that suits against the Government "shall proceed and shall be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties". (46 U.S.C. § 743).

No case decided under these, or other comparable statutes, has ever suggested that such a statute has in any way affected the rule laid down by this Court that "anyone entering into an arrangement with the government takes the risk of having accurately ascertained that he who purports to act for the government stays within the bounds of his authority", 337 U.S. at 384. On the contrary, recent decisions have reaffirmed this fundamental doctrine. See *e.g., B. V. Bureau Wijsmuller v. United States,* 487 F.Supp. 156 (S.D.N.Y. 1979), *aff'd* without opinion, No. 79-6263 (2d Cir., filed May 1, 1980); *Eastern Airlines v. United States,* 110 F.Supp. 491 (D. Del. 1952), *aff'd* 207 F.2d 560 (3d Cir. 1953).

While the cases cited concerned United States governmental agencies, Petitioner earnestly submits that the same basic rule of law should be equally applied to the agencies of friendly foreign powers. To allay any possible doubt on this score, the petition should be granted in order that the issue may be decided by this Court.

Respectfully submitted,

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